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Subject: Microsoft Settlement

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As an engineer involved in the industry professionally for over a decade, I am very concerned about the proposed settlement between the DoJ and Microsoft. I believe that given Microsoft's historic disregard for legal constraints on its behavior, and even simple inability to acknowledge the illegality of its actions, that the proposed settlement will not result in any meaningful change in their anti-competitive conduct. In addition, the settlement does not appear to penalize Microsoft for their past illegal actions.

The prohibited conduct under the agreement does not address the core of the illegal actions. Now that Microsoft has eliminated any significant competition in both the x86-based desktop operating system market and the web browser market, it's of little value to free OEM's from the illegal license terms and pricing models that allowed Microsoft to eliminate that competition. The agreement needs to penalize Microsoft for those past actions, but be forward looking to prevent similar illegal actions suppressing future illegal actions.

The agreement doesn't prevent Microsoft from using exactly the same tactics to suppress future competition in future markets. For example, the Open Source movement is emerging as significant competition in some application markets (web servers, databases), and as an alternative desktop operating system (Linux and WINE). Microsoft is already using their control over licensing terms for operating system to prohibit the distribution of add-in components (SDK's) with open source software in an attempt to hinder this software model. Microsoft even makes it illegal to use their C++ compiler to develop software for non-Windows operating systems, and licenses some software only for running under Windows, prohibiting the application's use under any competing operating system that has the ability to run Windows applications. The agreement does nothing to protect the web server or database markets, or the open source software movement, from continued (illegal, IMO) suppression. And the agreement does nothing to protect the ability of competitors to implement the Windows API's and allow users to run Windows software on competing operating systems.

The agreement does not penalize Microsoft for past illegal actions. The agreement only addresses future actions, and does not asses a penalty.

The wording of the agreement is so vague, with so many exceptions, that that it is wide open to abuse. And given that Microsoft historically has taken advantage of even the appearance of slight ambiguity extremely aggressively, it's hard to believe that they would not use the vagueness and exceptions to render the restrictions meaningless. For example, they can avoid the restrictions on their actions for a "Windows Operating System Product" by renaming it slightly. For example, if Microsoft shifts its efforts to "Windows XP Tablet PC Edition" (which will run Windows applications on desktop PC's with keyboards) then the restrictions become moot. As another example, the requirement that Microsoft publish all API's has the exception that any API can be hidden by Microsoft if the claim that the API relates to security; this is trivial to argue if Microsoft incorporates basic security mechanisms into any API that they wish to keep secret for other reasons.

The term of the agreement, and the lack of enforcement mechanisms, renders it meaningless. Since the agreement is of such limited duration, and violating it has no impact other than a short extension, it will have no significant effect on Microsoft's behavior, and even if it does for the duration of the agreement, that period is too short a time for competitors to come into place and achieve meaningful market presence.

Finally, I believe that leaving Microsoft structurally unchanged, with an oversight committee, cannot result in a fundamental shift in Microsoft's hostile attitude towards fair competition in the marketplace because it cannot have the visibility into the wide range of Microsoft's activities, nor does it have enforcement mechanisms sufficient to compel Microsoft to comply with its rulings; quite simply, given the scale and

profitability of Microsoft's business, minor changes in contractual wording aren't gong to meaningfully change the company's direction.

I believe that the only mechanism that can change Microsoft's behavior is to make a separation of the company in which the self-interest of the resulting companies leads to increased competition. The fundamental issue is that there is only a single company that controls the operating system required all participants in the PC industry, and that company does not believe that it has to compete fairly in new markets. Given that Microsoft has consistently rejected attempts to moderate its behavior, I believe that the only remaining options are either to create multiple competing companies in the operating system business, or to strengthen the agreement sufficiently to force Microsoft to behave legally.

STRENGTHENING THE AGREEMENT

I believe that the central need here is to make the Windows API's a completely public document that all participants (Microsoft's operating system team, competing operating system vendors, Microsoft's applications teams, competing application vendors) have equal access to, and against which compliance is independently assured. The documentation of the API, and validation of compliance to it, should be managed by an independent third-party.

The agreement would need to draw a clear line between operating system, middleware and applications, and restrict communications between the layers to confirm to publicly documented API's.

Similarly, communication between the operating systems, middleware and applications teams within Microsoft must be restricted so that internal teams are treated on an equal footing with external competitors. For example, whenever the MS Office team needs to discuss an API enhancement with the Windows XP team, it must also discuss that API requirement with the WINE team or any other competing Windows API implementor. For simplicity, it may be better for all API-related communications to be coordinated by an independent third party (e.g. the organization administering the Windows API, for example) to which all participants have equal access. Integration between layers would only be allowed through publicly documented API's, validated by the independent third party -- there would be no "private" communication channels between the layers.

The agreement would apply to any version of any operating system shipped by Microsoft, under any name.

The agreement would have no termination. Violation of the agreement could be penalized by up to 10% of Microsoft's revenue for the duration of the time during which Microsoft is found not to be in compliance.

The agreement would guarantee the right to produce and distribute competing implementations of the Windows API's. Microsoft would be prohibited from implemented code in operating system (e.g. Windows XP), operating system add-in components (e.g. Windows Media Player) or their applications (e.g. MS Office) that attempts to determine whether it is running over a Microsoft or a competing implementation of the API, would have no dependencies on implementation details of Microsoft's implementations of the API's, and would make a good faith effort to ensure that such add-ons and applications would operate properly over any implementations of those API's. Microsoft would waive all intellectual property rights that would otherwise affect the ability of third parties to implement the API's.

MULTIPLE WINDOWS COMPANIES

In this option, I would propose forming three companies, all with equal rights to all current Microsoft intellectual property (patents, source